

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of

Carl H. Hennrich, Inc.
ATTN: Carl P. Hennrich

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation
Franchise Tax under Article 9A of the Tax Law for :
the Year Ended 12/31/73.

State of New York
County of Albany

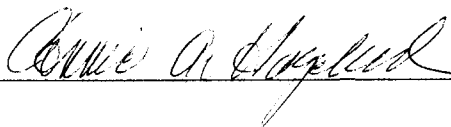
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 4th day of November, 1983, she served the within notice of Decision by certified mail upon Carl H. Hennrich, Inc., ATTN: Carl P. Hennrich the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

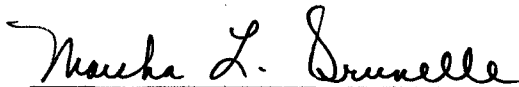
Carl H. Hennrich, Inc.
ATTN: Carl P. Hennrich
c/o Frank B. Hall & Co. of Hawaii, Inc.
Kam Highways
Hauula, HI 96717

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
4th day of November, 1983.





MAUCHA L. BRUNELLE
CLERK TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Carl H. Hennrich, Inc. :
ATTN: Carl P. Hennrich :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation
Franchise Tax under Article 9A of the Tax Law for :
the Year Ended 12/31/73.

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 4th day of November, 1983, she served the within notice of Decision by certified mail upon Howard H. Weston the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Howard H. Weston
Peat, Marwick, Mitchell & Co.
One Marine Midland Plaza,
Rochester, NY 14604

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
4th day of November, 1983.

Connie A. Hagelund

Maucha L. Brunelle

CLERK OF THE COMMISSIONER
STATE TAX COMMISSION
SECTION 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

November 4, 1983

Carl H. Hennrich, Inc.
ATTN: Carl P. Hennrich
c/o Frank B. Hall & Co. of Hawaii, Inc.
Kam Highways
Hauula, HI 96717

Dear Mr. Hennrich:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Howard H. Weston
Peat, Marwick, Mitchell & Co.
One Marine Midland Plaza,
Rochester, NY 14604
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
CARL H. HENNRICH, INC.
for Redetermination of a Deficiency or for
Refund of Corporation Franchise Tax under
Article 9-A of the Tax Law for the Year Ending
December 31, 1973.

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DECISION

Petitioner, Carl H. Hennrich, Inc., c/o Mr. Carl P. Hennrich, 53-137 Kam Highways, Hauula, Hawaii 96717, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the year ending December 31, 1973 (File No. 21783).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on July 23, 1981 at 2:45 P.M. Petitioner appeared by Peat, Marwick, Mitchell & Co. (Howard A. Weston, Esq.). The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUES

- I. Whether petitioner is entitled to a refund of State franchise tax based on the decrease in taxable income for the year ending December 31, 1973.
- II. Whether certain income should have been taxed at capital gain rates.

FINDINGS OF FACT

1. Petitioner entered into a brokerage agreement on December 5, 1972 whereby petitioner agreed to sell "insurance expiration" (the right to brokerage of insurance policies) to L. G. Loomis, Inc. for two-fifths of the annual commission earned by Loomis on said policies over a period of five years commencing January 1, 1973. Petitioner reported the sale in 1973 as a capital

gain using an estimated present value (1973) of future commissions earned.

Carl P. Hennrich and his wife paid State income tax of \$13,400.57, on a total amount of \$93,900.00 received from the sale over a four-year period. They are the sole distributees of petitioner.

2. Upon an audit by the Internal Revenue Service it was determined and agreed that all payments made to petitioner, under the agreement, should be included in gross income of petitioner when such payments were received and that no portion of the payments represented capital gain.

3. On November 6, 1976 petitioner filed a Report of Change in Taxable Income by U.S. Treasury Department for period ending December 31, 1973. As the result of a decrease of \$70,252.67 in taxable income, a refund of \$6,322.74 plus interest was sought, for a total of \$6,796.95.

4. On May 17, 1977, the Audit Division denied the refund on the ground that "[s]ince the corporation (petitioner) was dissolved on July 17, 1974, it must report all unearned income at the time of the dissolution of this corporation. Accordingly, the commission income is taxable to this corporation and your claim for refund is not allowable."

CONCLUSIONS OF LAW

A. That section 208.9(d) of the Tax Law provides as follows:

"The tax commission may, whenever necessary in order properly to reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without regard to the method of accounting employed by the taxpayer."

Since the corporation was dissolved on July 17, 1974, all unearned income was properly required to be reported at the time of dissolution.

B. That section 1221 of the Internal Revenue Code defines capital asset as property held by the taxpayer but does not include accounts receivable

acquired in the ordinary course of business for services rendered. Therefore, petitioner may not claim that unearned income of "insurance expiration" be taxed at capital gain rates.

C. That the petition for a refund by Carl H. Hennrich, Inc. is hereby denied.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 04 1983

Rodrich W. Cline
PRESIDENT
Frank R. Koenig
COMMISSIONER
[Signature]
COMMISSIONER